

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

75-7278

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FOR THE SECOND CIRCUIT

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P/S

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REBECCA REYHER and RUTH GANNETT, :

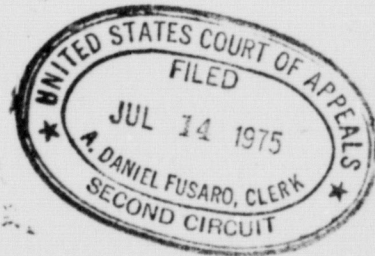
Appellants, :

v. :

75-7278

CHILDREN'S TELEVISION WORKSHOP :
and TUESDAY PUBLICATIONS, INC., :

Appellees. :
-----x



BUTLER, JABLOW & GELLER
PAUL P. SELVIN
Attorneys for Writers Guild
of America, East, Inc., and
Writers Guild of America,
West, Inc.

400 MADISON AVENUE, NEW YORK 10017

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BRIEF OF AMICUS CURIAE
WRITERS GUILD OF AMERICA

Amicus curiae, Writers Guild of America, East, Inc. and Writers Guild of America, West, Inc. (both hereinafter collectively referred to as the "Guild"), respectfully submit this brief in the above-entitled appeal in support of appellant Rebecca Reyher. This brief is confined in its discussion solely to that part of the appeal from the decision of Mr. Justice Cannella which dismissed that part of the complaint dealing with the written, as distinguished from the graphic, material contained in the book "My Mother Is the Most Beautiful

Woman in the World".

The Guild is the collective bargaining representative for some 5,000 writers throughout the United States engaged to write literary material for motion pictures, television and radio. It has collective bargaining agreements with all of the networks and virtually all major and independent motion picture and television producers, which such agreements cover the minimum terms and conditions under which writers may supply literary material in the aforementioned media, including, of course, those minimum rights which writers reserve in connection with any such engagements. Because the membership of the Guild is composed of professional writers, the interests of those members are not necessarily confined to the television, motion picture and radio media; many of the Guild's members, in addition to writing for those media, also write books, stage plays, magazine articles and the like.

The Guild's interest in this appeal from the decision of the District Court dismissing the complaint

with respect to the literary material involved arises out of the possible far reaching effect of the lower court's conclusion that the plaintiff's book was a derivative work.

As the Guild reads the lower court's decision, there appears to be an implication that, were it not for the conclusion that the plaintiff's work is a derivative one, the defendants might well have infringed on the plaintiff's book because of the existence of marked similarities in the material. The Guild further understands the lower court's decision to mean that because the plaintiff had testified that she originally had heard the story upon which her book was based from her mother and because there was an unproven possibility that the story itself might have been a folk tale, the plaintiff's book becomes merely a derivative work and "the defendants have the same right to make use of it [the basic story] as does Mrs. Reyher, herself." There was apparently no evidence presented that the story came anywhere other than from the plaintiff's mother in oral form nor,

apparently, was there any proof that the work was a folk tale or otherwise in public domain.

Thus, as the Guild understands the lower court's conclusion, the mere telling of the story by the plaintiff's mother to the plaintiff and the uncorroborated surmise that it might have been a folk tale, renders the plaintiff's work a derivative work not entitled to full copyright protection as to story itself.

Such a conclusion, if it were to become a precedent, would create complete and utter chaos in the writing field not only with respect to books but also insofar as television, motion pictures, radio and all other writing media are concerned--and this not only with respect to writers, but with respect to producers and publishers as well.

The practice in the writing profession has long been that a purchaser of literary material, whether he be a producer or a book publisher, seeks the maximum guarantee of originality in accepting the work. In

varying degrees, virtually every agreement a writer enters into contains such representations of originality and indemnification provisions against suits brought for infringement. If the decision appealed from, as read by the Guild, were to stand as precedent, there would be few instances where a writer could in good conscience execute any such warranties of originality. Creativity does not exist in a vacuum. A writer in most instances usually has little to rely upon for his or her creativity other than his or her own intellect and experience. This experience consists of memories, observations, bits and pieces of remembered dialogue and family reminiscences. Without these, a writer could not be expected to produce a literary work to which complete strangers could relate. In the instant case, apparently the experience factor forming the basis of the appellant Reyher's literary work was a story told to her by her mother. If that telling renders the creative work of the appellant a derivative work, then a myriad of well known literary works of art would similarly fall within that same category. Indeed,

an unconscionable burden of proof would then be placed upon the writer to prove that any story written by him was completely and totally unique and never before heard.

At the very least, it is respectfully submitted that the appellant's mother was entitled to a common law copyright in the story which, by her actions and by her relationship to the appellant, she ceded to the appellant, giving the appellant the exclusive rights thereto. Similarly, the appellant should not be put to the test of proving that the story itself was not in the public domain. Certainly, that is the clearcut burden of the appellees, if such is their defense. In all cases where the defense to actions of this sort is that prior art exists, the defendant clearly has the burden of proving that prior art. In this instance, if the Guild correctly reads the lower Court's recitation of the facts, no such proof was adduced.

If the conclusion reached by the lower Court were to become precedential, works such as "The Old Man

and the Sea", "Fiddler on the Roof", and "Remembrance of Things Past" would be fair game for all.

For those reasons, the Guild respectfully prays that this Court reverse the decision of the Court below.

Respectfully submitted,

BUTLER, JABLOW & GELLER
PAUL P. SELVIN
Attorneys for Writers Guild
of America, East, Inc., and
Writers Guild of America,
West, Inc.
400 Madison Avenue
New York, New York 10017
755-2040

Copy rec'd 7/14/75 11¹⁰ AM
Contact Brothers by S. S. Guden
Attorneys for respondents

Copy rec'd 7/14/75
Dean John Paul
attys for appellants